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BEFORE THE ARIZONA CORPORATION COMMISSION
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2 COMMISSIONERS
3 KRISTIN K. MAYES, CHAIRMAN
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

2009 DEC 21 P 3: 52

AZ CORP COMMISSION
DOCKET CONTROL

8 IN THE MATTER OF THE FORMAL
9 COMPLAINT AGAINST MOHAVE
10 ELECTRIC COOPERATIVE, INC.
11 FILED BY ROGER AND DARLENE
12 CHANTEL.

DOCKET NO. E-01750A-09-0149

RESPONDENT MOHAVE ELECTRIC'S
RESPONSE TO COMPLAINANTS' MOTION
TO RECESS FORMAL COMPLAINT

13 Mohave Electric Cooperative, Inc. ("Mohave"), Respondent herein, responds to
14 and opposes Complainants' Motion to Recess Formal Complaint for the reasons that: 1)
15 Complainants present no legitimate basis for recessing the present ACC proceeding; and 2)
16 Complainants are unable to go forward with a state court proceeding until they have
17 exhausted their administrative remedies before the ACC. Moreover, it would appear that the
18 Complainants have ulterior motives in seeking a "recess" at this time when the administrative
19 law judge ("ALJ") has ordered them to make the "artwork" structure (see picture attached as
20 Exhibit A) available for Mohave's inspection. In short, this "forum-shopping" for a new
21 legal arena because the ALJ's order compelling inspection of the premises does not suit them
22 cannot be sanctioned by the Commission. Complainants' Motion to Recess must be denied.
23 Mohave so requests.

Arizona Corporation Commission

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1 ANALYSIS OF MOTION TO RECESS

2 Complainants cite A.A.C. R14-3-109 as the basis for their Motion to Recess the
3 scheduled hearing of January 20, 2010 and simply state that they wish to pursue, in a newly
4 filed state court proceeding in Mohave County Superior Court, "among other things," ...
5 recovery of "damages from Respondent for its alleged breach of contract, to quiet title
6 regarding Complainants' property that Respondent, without any recorded easement or right of
7 way, has placed a power line across, and recover for damages caused by Respondent's torts"
8 (*sic.*). While the Complainants elected to not attach a copy of the new Complaint to their
9 Motion to Recess, the new Complaint is primarily a rehash of the frivolous allegations that
10 comprise the formal complaint that commenced this proceeding. Without any sound basis for
11 a recess, the Complainants' Motion cannot be granted. Complainants cannot simply engage
12 in forum-shopping to avoid the ALJ's recent discovery order to permit the inspection of the
13 "artwork" structure.

14 Moreover, the Complainants cannot justify a recess of this proceeding because
15 they have not exhausted their administrative remedies (if any exist for them) before this
16 Commission before resorting to state court. As Mohave pointed out to the Mohave County
17 Superior Court for the Complainants' Petition for Writ of Mandamus (filed in January of
18 2009, which Mohave successfully defended and had dismissed):

19 "administrative rules require the filing of a "formal"
20 complaint ... if a complainant is unsatisfied with the
21 disposition of the informal complaint. It is not until
22 this intermediate step is satisfied that a complainant
23 (such as the Petitioners) can appeal to a superior court
24 under the Judicial Review of Administrative
25 Procedures Act (A.R.S. § 12-901 *et seq.*). Until

1 Petitioners complete the intermediary step required in
2 A.A.C. R14-3-106 M, they have no right to access a
 superior court.”

3 A copy of the Mohave County Superior Court’s Order of Dismissal of the last Complaint
4 filed by the Chantels is attached as Exhibit B.
5

6 Respondent has previously reminded the Complainants that they must exhaust
7 administrative remedies in this matter before pursuing any other remedies (see attached
8 Exhibit C). The principal issue in this hearing is whether Mohave acted reasonably when
9 requested by Mohave County to disconnect the transmission lines over the Chantel 6,400
10 square foot “artwork” structure for a myriad of reasons, including public safety concern and
11 inadequate clearance between the transmission line and the “artwork” structure. These issues
12 must be adjudicated administratively before the Complainants pursue any action in state
13 court.
14

15 **CONCLUSION**

16 The Complainants have been disingenuous with the Arizona Corporation
17 Commission with regard to their claim that the artwork structure has no purpose other than
18 for artwork and the allegation that it protects them from the former overhead transmission
19 lines of Mohave. They have not permitted an inspection of their “artwork” structure and have
20 ignored the ALJ’s order for inspection.
21

22 Mohave opposes Complainants’ Motion to Recess this proceeding for the
23 reason that no reasonable grounds are presented for a recess, and a recess is not necessary,
24 given the obligation of the Complainants to exhaust their administrative remedies in this ACC
25 proceeding before attempting any judicial appeal.

1 DATED this 21st day of December, 2009.

2 CURTIS, GOODWIN, SULLIVAN,
3 UDALL & SCHWAB, P.L.C.

4
5 By: 

6 Michael A. Curtis

7 Larry K. Udall

8 501 East Thomas Road

9 Phoenix, Arizona 85012-3205

10 Attorneys for Mohave Electric

11 Cooperative, Inc.

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Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Belinda A. Martin, Administrative Law Judge
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Janice Alward, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing mailed
this 21st day of December, 2009 to:

Jonathan A. Dessaulles
Douglas C. Wigley
Dessaules Law Group
2700 North Central Avenue, Suite 1250
Phoenix, Arizona 85004
Attorneys for Complainants

Melny Walker

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EXHIBIT A

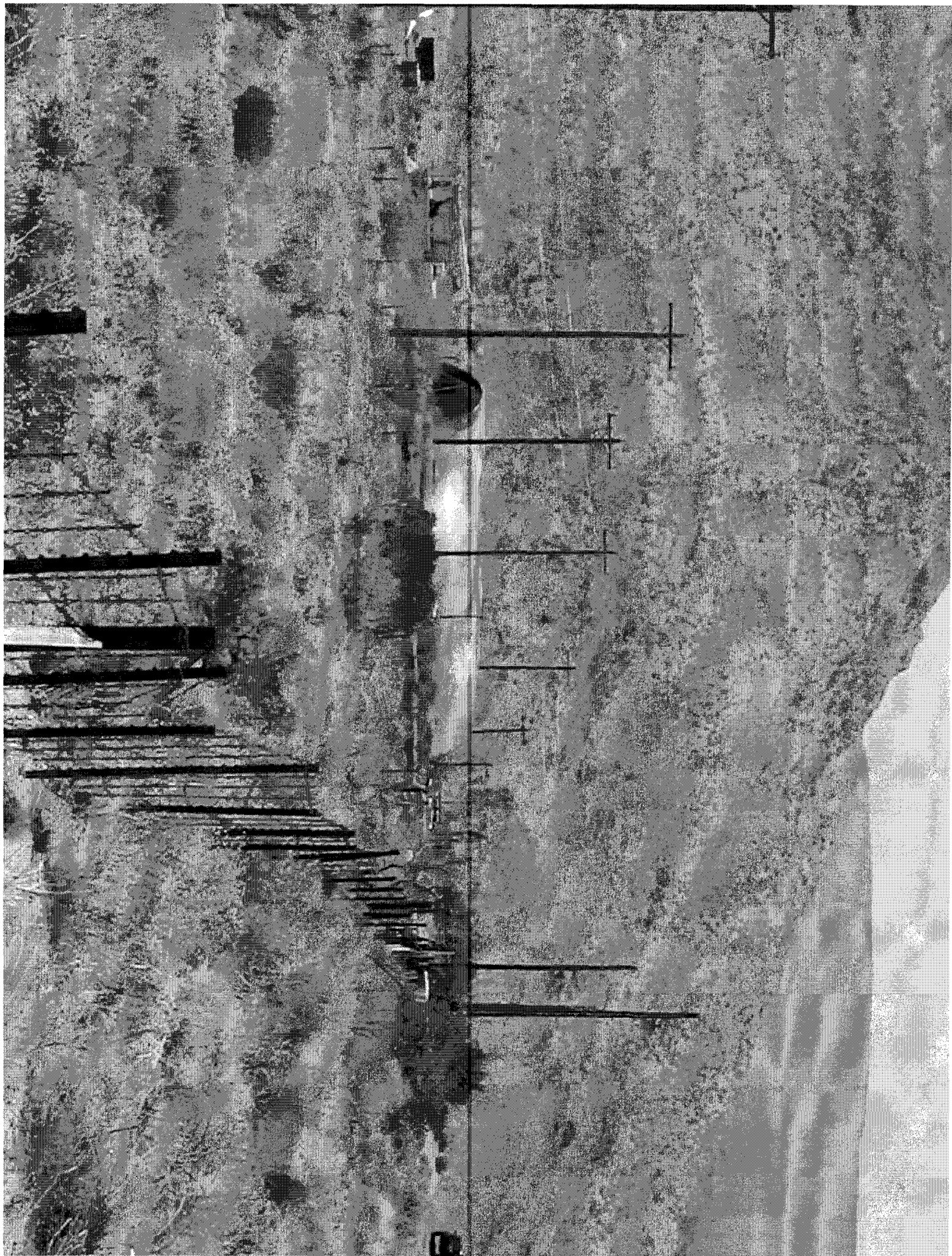


EXHIBIT B

NOTE FILE NO. 1234-7-41

XEROX ALL PLEADINGS ☒

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FILED in Court Record

STAMPED _____ DATE _____

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AND INITIALED DIT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE JAMES CHAVEZ
DIVISION: 4
DATE: 02/05/2009
TIME: 2:32 P.M.

VIRLYNN TINNELL, CLERK
JOETTE ENGAN, DEPUTY CLERK
JIM GLOVER, COURT REPORTER
COURTROOM: D

ORAL ARGUMENTS

ROGER CHANTEL, et al.
Plaintiff(s),

CV-2009-0058

vs.

MOHAVE ELECTRIC COOPERATIVE INC,
Defendant(s).

APPEARANCES: Roger and Charlene Chantel, Plaintiff(s) appearing in Pro Per. Larry K. Udall, Attorney for the Defendant.

This is the time set for Oral Arguments.

Mr. Udall has filed a Motion to dismiss.

Parties present arguments.

IT IS ORDERED dismissing this complaint without prejudice. Mr. Udall can file a request for attorney's fees, but the Court is not saying it will grant it.

The Court recesses at 3:24 p.m.

cc:

ROGER CHANTEL
CHARLENE CHANTELL
10001 EAST HWY 66
KINGMAN AZ 86401
Plaintiff

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FEB 09 2009

CURTIS, GOODWIN, SMITH & JENKINS
UDALL & SCHWARTZ, P.C.

THE LAW OFFICES OF CURTIS, GOODWIN,
SULLIVAN, UDALL & SCHWAB, P.L.C.
501 EAST THOMAS ROAD
PHOENIX AZ 85012-3205
Attorneys for Mohave Electric Cooperative, Inc.

HONORABLE JAMES CHAVEZ
Division 4

EXHIBIT C

The Law Offices of
**CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.**

501 East Thomas Road
Phoenix, Arizona 85012-3205

Michael A. Curtis
Susan D. Goodwin
Kelly Y. Schwab
Phyllis L.N. Smiley

Telephone (602) 393-1700
Facsimile (602) 393-1703
E-mail ludall@cgsuslaw.com
www.cgsuslaw.com

William P. Sullivan
Larry K. Udall
Anja K. Wendel
Michelle Swann

Of Counsel
Joseph F. Abate
Thomas A. Hine

REFER TO FILE NO. 1234-7-44-1

September 16, 2009

VIA FACSIMILE & US MAIL

Jonathan A. Dessaulles, Esq.
Dessaulles Law Group
2700 North Central Avenue, Suite 1250
Phoenix, Arizona 85004

Re: MEC adv. Chantel; Docket No. E-01750A-09-0149
Your correspondence of September 14, 2009

Dear Mr. Dessaulles:

We are in receipt of your correspondence dated September 14, 2009 wherein you request reinstatement of power to the Chantel residence. It is possible that your clients, Mr. and Mrs. Chantel, did not provide to you the information Mohave Electric Cooperative provided when Mr. Chantel last asked for reinstatement of power. As indicated in the attached correspondence (dated October 21, 2008) previously sent to Mr. Chantel, the cost for reinstatement was anticipated to be the sum of \$12,135.09. Mohave is updating this figure, but it will take about a week to adjust for increasing costs.

You have threatened to pursue other avenues of recourse if the reinstatement of power is not on terms satisfactory to your client. To our knowledge, given the current state of the law on provided electricity, the only remedy your client has (besides his use of a gas generator which he has and uses) is to pursue this matter in a proceeding before the Arizona Corporation Commission. Such a proceeding is exactly what is now occurring. In your representation of the Chantels, it would be prudent to not be aggressive to the point of violating the Rule 11 guidelines for legal representation. In other words, please do not make the mistake of inappropriately trying to go to another court during the pendency of this proceeding. Your

Jonathan Dessaulles, Esq.
September 16, 2009
Page 2

client is required to and must exhaust his administrative remedies before the Arizona Corporation Commission.

Very truly yours,

Larry K. Udall
maw

Michael A. Curtis

Larry K. Udall

For the Firm

LKU/maw

Enclosure: As Noted

cc: Mr. Robert Broz

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